RECORD, CA

SUPREME COURT OF THE

OCTOBER

TERM

THE NATIONAL DREDGING

ERROR.

vs.

THE STATE OF

IN ERROR TO THE SUPREME

FILED

RECORD, CASE No. 15,304.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 1334.

THE NATIONAL DREDGING COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF ALABAMA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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1 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Alabama, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The National Dredging Company and The State of Alabama, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a statute or treaty of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said National Dredging Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the eleventh (11th) day of May next, in said Supreme Court to be then and

2 there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 13th day of April, in the year of our Lord one thousand eight hundred and ninety-three.

{ Seal of the United States Circuit Court, Middle District of Alabama. }

J. W. DIMMICK,
Claerk of the Circuit Court of the United States for the Middle District of Alabama.

Allowed by—
GEO. W. STONE,
Chief Justice of the Supreme Court of Alabama.

Endorsed: Supreme Court of Alabama. Filed April 13, 1893. Sterling A. Wood, clerk.

1—1334

3 Supreme Court of Alabama.

Know all men by these presents that the National Dredging Company, a corporation of the State of Delaware, by Gaylord B. Clark, its attorney, and James McPhillips and T. C. Hartwell are held and firmly bound unto the State of Alabama, in the full and just sum of one thousand dollars, to be paid to the State of Alabama, its certain attorney, successor, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 13 day of April, in the year of our Lord one thousand eight hundred and ninety-three.

Whereas at a regular term of said court, in a suit therein pending between The National Dredging Company and The State of Alabama, a judgment was rendered against the said National Dredging Company, and the said National Dredging Company having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the said suit, and a citation directed to said State of Alabama, citing and admonishing it to be and appear at the Supreme Court of the United States, to be holden at at Washington on the 11th day of May, in the year of our Lord one thousand eight hundred and ninety-three:

Now, the condition of the above obligation is such that if the said National Dredging Company shall prosecute said appeal to effect and answer all damages, costs, etc., if *he* fail to make good said appeal, then this obligation shall be void; otherwise to be and remain in full force and virtue.

NATIONAL DREDGING CO.,
By GAYLORD B. CLARK, *Att'y.* [SEAL.]
JAMES McPHILLIPS. [SEAL.]
T. C. HARTWELL. [SEAL.]

Approved April 13, 1893.
GEO. W. STONE.
Chief Justice of the Supreme Court of Alabama.

Endorsed: National Dredging Co. *v.* State of Alabama. Supersedeas bond. Supreme court of Alabama. Filed April 13, 1893. Sterling A. Wood, clerk.

4 UNITED STATES OF AMERICA, *ss:*

To the State of Alabama:

Your are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 11th day of May next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Alabama, wherein The National Dredging Company is plaintiff in error and The State of Alabama defendant in error, and to show cause, if any there be, why judgment in said writ of error mentioned against the said plaintiff in error shall not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable George W. Stone, chief justice of the supreme court of the State of Alabama, this 13 day of April, in the year of our Lord one thousand eight hundred and ninety-three.

GEO. W. STONE,
Chief Justice of the Supreme Court of the State of Alabama.

One this — day of April, in the year of our Lord one thousand eight hundred and ninety-three, personally appeared the subscriber hereto and makes oath hereto that he delivered a true copy of the within citation on Thomas G. Jones, governor of the State of Alabama.

I acknowledge service of the above citation on writ of error sued out of the supreme court of Alabama this 13th day of April, 1893.

WM. L. MARTIN,
Attorney General of Ala.

(Endorsed:) Supreme court of Alabama. Filed Apr. 13, 1893. Sterling A. Wood, clerk.

5 The Supreme Court of the United States.

In the Matter of the Petition of THE NATIONAL DREDGING COMPANY, Plaintiff in Error.

Assignment of Errors.

Afterwards, to wit, on the 11th day of May, 1893, at the October term for eighteen hundred and ninety-three of the Supreme Court of the United States, at the Capitol, in the city of Washington and District of Columbia, comes the said National Dredging Company, by Gaylord B. Clark, its attorney, and says that in the record and proceedings in cause wherein the said National Dredging Company is plaintiff in error and The State of Alabama is defendant in error there is manifest error in this, to wit:

1.

The court erred in rendering judgment against the plaintiff in error as set forth in the judgment of affirmance, entered on the 4th day of April, 1893.

2.

The court erred in holding that the property in question at the time of the assessment thereof was subject to taxation by the State of Alabama and by the county of Mobile.

3.

The court erred in holding that the dredge-boat "Forbes" was subject to taxation by the State of Alabama.

4.

The court erred in holding tha- the tug-boat "Curtis" was subject to taxation by the State of Alabama.

5.

The court erred in holding that the five mud scows were subject to taxation by the State of Alabama.

6 Wherefore the said National Dredging Company prays that the judgment of the said supreme court of Alabama be reversed and held for naught.

GAYLORD B. CLARK,
Att'y for Plaintiff in Error.

7 Filed Nov. 1, 1892.—Sanford, clerk.

THE NATIONAL DREDGING CO., Appellant,
v.
THE STATE OF ALABAMA, Appellee. } 1 Div. 771.

Appeal from Mobile city court.

Nov. 2, 1892, argued and submitted.
April 4, 1893, affirmed.

McCLELLAN, *J.*

8 *Index to Transcript.*

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8½ Transcript of the record and proceedings of the city court of Mobile in a certain case therein lately pending, wherein The State of Alabama is plaintiff and The National Dredging Company defendant.

Prayer for Appeal from Rev. & R'd Com. to City Court.

Prayer for appeal and supersed-as bond from court of county commissioners to the city court of Mobile.

Before the board of revenue and road commissioners of Mobile Co.

STATE OF ALABAMA
v.
NATIONAL DREDGING CO.

Now comes the National Dredging Company, by its attorney, and prays an appeal to the July term of the city court of Mobile — the order and judgment of the court entered on the 13th of June, 1892.

CLARK & CLARK,
Att'ys National Dredging Co.

Appeal Bond from Rev. & R'd Com. to City Court.

STATE OF ALABAMA
v.
NATIONAL DREDGING CO.

STATE OF ALABAMA,
Mobile County.

Know all men by these presents that the National Dredging Co., a corporation of the State of Delaware, as principal, and T. C. Hartwell and Jas. McPhillips, as sureties, are hereby held and firmly bound unto the State of Alabama in the sum of $700.00; which sum to be paid to the said State of Alabama we bind ourselves, our heirs and personal representatives, jointly and severally, firmly by these presents.

The condition of the above obligation is such that whereas the board of revenue and road commissioners of Mobile county, sitting as a court, did, on the 13th day of June, 1892, order and adjudge that the prayer of the petition filed by the said National
9 Dredging Company to have certain taxes abated should be denied, and that an assessment against said National Dredging Company on certain property claimed by said National Dredging Company to be exempt from taxation should stand and be effective at a valuation of $33,000.00; and whereas said National Dredging Company has prayed an appeal from said order to the June term, 1892, of the city court of Mobile; and whereas the tax for 1892 due on said property be $347.57: Now, if the said National Dredging Co. shall prosecute such appeal to effect and pay such judgment as the city court may render, then these presents shall be void; otherwise to be and remain in full force and effect.

Witness our hands and seals this 14th day of June, 1892.

NATIONAL DREDGING COMPANY,
By CLARK & CLARK, *Att'ys.* [SEAL.]
T. C. HARTWELL. [SEAL.]
JAMES McPHILLIPS. [SEAL.]

Filed June 14, '92.

PRICE WILLIAMS, JR., *Clerk.*

Filed in office July 5th, 1892.

JNO. F. POWERS, *Clerk.*

Transcript of proceedings had before the board of revenue & road commissioners.

Transcript of Proceedings had Before B'd Rev. & R'd Com.

Transcript of the record and proceedings of the board of revenue and road commissioners of Mobile county in the matter of The State of Alabama *versus* The National Dredging Company—petition for an abatement of the assessment for State and county taxes.

Petition of National Dredging Company.

To the honorable board of roads and revenue commissioners:

10 *Petition.*

Your petitioner, the National Dredging Company, respectfully shows unto your honorable body that it is a corporation of the State of Delaware, having its principal place of business in the city of Wilmington, in said State; that it is not doing any business in the State of Alabama save that hereinafter mentioned, viz., that petitioner, having no place of business in Alabama nor any property therein, bid for the United States contract for dredging Mobile harbor and bay, and, having become the successful bidder, did send certain of its officers and agents, with its machinery and plant, to the bay of Mobile for the purpose of executing said contract and for no other purpose, purchasing a portion of said machinery and plant in Alabama subsequently to January 1st, 1891; that all of its property consists of dredges, dredge-boats, tug-boats, scows, machinery, tools, implements, and supplies, all of which are being used by it solely for the purpose of executing said contract with the United States Government and for no other purpose; that said boats and other property have no permanent situs in the State of Alabama; that said petitioner is not subject to taxation in the State of Alabama, and petitioner is not liable under the laws of the State of Alabama and the United States to pay taxes on the said property in this State; that said property is only subject to taxation in the State of Delaware, at the home port of said boats, wherever they are registered, and which is the domicile of your petitioner.

Petitioner avers that it did not return any assessment for the year 1891, not being liable for the payment of taxes in the State of Alabama, and that no assessment was made against it by the assessor in his original and principal report; that subsequently, on or after the first day of May, 1891, said assessor placed upon

11 the tax book an assessment against its dredges, tug-boats, and scows at an aggregate valuation of seventy-three thousand dollars ($73,000), and returned the same in his supplemental assessment; that the said assessor did call on petitioner for the return of its property some time prior to said assessment, and that petitioner's agent called on said assessor and stated the facts above,

and that said assessor or his representative in the office acquiesced, as petitioner understood him, in the claim that said property was not taxable in this State; that petitioner had no notice whatever of the said assessment until a tax bill was presented by L. H. Kennedy, tax collector, under a special act of the legislature, for taxes on said property for the year 1892, which assessment petitioner was advised was copied from the tax books of Mobile county for the year 1891; that this is the first opportunity petitioner has had since such knowledge of the facts to bring the matter to the attention of your honorable board. Petitioner further shows that on the 10th day of January, 1891, he purchased the tug-boats Bacon and Curtis and the dredges Grayhill, Forbes, and No. 5 and six mud scows of George C. Forbes & Co., who were then and are now residents of the State of Maryland; that the said tug-boats Bacon and Curtis were then registered in Baltimore, Maryland, and are now registered in Wilmington, Delaware; that the dredge Forbes and three mud scows were at Harrisburg, near Galveston, Texas, and that the dredges "Grayhill" and "No. 5" and three mud scows were temporarily at Mobile; that, the said "Forbes & Co." having no permanent situs for themselves or property in this State and doing no business in this State, said property was not prior to the purchase of the same by your petitioner and is not now taxable in this State.

Wherefore, the promises considered, petitioner prays that your honorable board will abate said assessment from the tax books of 1891, and that the same may be expunged therefrom as a
12 mistake, and that said fact be certified to the tax collector, Kennedy, tax collector of the city of Mobile.

And your petitioner will ever pray, &c.

NATIONAL DREDGING COMPANY,
By THOS. C. PURDY, *Pres't.*

Subscribed and sworn to before me this 10th day of March, A. D. 1892.

E. FRY,
Notary Public.

Order of the Board of Revenue and Road Commissioners, May 9th, 1892.

Order of the b'd of rev. & r'd com.

STATE OF ALABAMA, }
County of Mobile. }

BOARD OF REVENUE AND ROAD COMMISSIONERS,
May 9th, 1892.

The hon. board of revenue and road commissioners of Mobile county met at the court-house of said county at 12 o'clock m. this 9th day of May, 1892, in regular monthly session.

The members present were Samuel A. Mountain, Jr., president;

Murdock McInnis, Dominique Gimon, W. F. Sirmon, and W. T. Hieronymus.

STATE OF ALABAMA
versus
NATIONAL DREDGING CO.

The petition from this company, asking for an abatement of assessment, and which was referred to the county attorney, was returned with the following opinion thereon, viz:

"To the board of revenue and road commissioners.

GENTLEMEN: In reference to the petition of the National Dredging Company for the abatement of their taxes for the year 1891, it is my opinion that petitioner show good cause for the abatement of a part of the tax for that year, in this: that the property here on the 1st day of Jan'y, 1891, belonged to Geo. C. Forbes & Co., and was not purchased by petitioners till Jan'y 10th, 1891. This
13 property should have been assessed to the person who owned it on the 1st day of January.

The property brought into the State by petitioners during the year 1891 should be assessed to them. According to the statements in the petition, this applies to the dredge 'Forbes' and three mud scows and perhaps other property.

I can see no force in the proposition that because this property is used for the purpose of executing a contract with the United States Government they had no place of business in this State. They have had a place of business here since and have done a large business.

If such were the law no citizen of the State could compete with an outsider in bidding for such contract work. I cannot believe our laws so unjustly discriminate against our own people, or that a non-resident can come into the State and engage in business which may require his presence or that of his agents *from* indefinite time, certainly not less than a year, and not be liable for taxes.

Respectfully, WM. S. ANDERSON, *Att'y.*"

It was moved, seconded, and adopted that the opinion of the county attorney, as above set forth, be and is the judgment of the board of revenue and road commissioners upon the petition of the National Dredging Company.

Order of the Board of Revenue and Road Commissioners, June 13th, 1892.

STATE OF ALABAMA,
Mobile County.

BOARD OF REVENUE AND ROAD COMMISSIONERS,
June 13th, 1892.

The hon. board of revenue and road commissioners of Mobile county convened in regular monthly session at the court-house of said county at 12 o'clock m. this 13th day of June, 1892.

The members present were Samuel A. Mountain, Jr., presi-
14 dent; Murdock McInnis, Dominique Gimon, W. F. Sirmon, and W. T. Hieronymus.

Judgment Entry of B'd of Rev. & R'd. Com.

Judgment entry in the case of The State of Ala. *vs.* National Dredging Company.

In the Matter of the Petition of THE NATIONAL DREDGING COMPANY for the Abatement of Taxes Assessed for the Year 1891.

This petition being duly considered on the agreed statement of facts and the allegations of the petition, the board is of the opinion and orders that the prayer of said petition be granted as to the following property: Dredge-boat No. 5, assessed at $10,000.00; dredge-boat Craighill, assessed at $10,000; tug-boat Bacon, assessed — $8,000.00; 4 scows, assessed at $3,000.00 each, $12,000.00, making a total assessment of $40,000.00; and it is ordered that said assessment of $73,000.00 be abated to the amount of $40,000.00, the items above named.

It is further ordered that the prayer of the petitioner as to the dredge-boat Forbes, assessed at $10,000; as to the tug-boat Curtis, assessed at $8,000.00, and 5 cows, assessed at $3,000.00 each, making an aggregate of $33,000.00, be overruled.

And it is ordered that the assessment of the said National Dredging Company for the year 1891 shall be placed at $33,000.00 instead of $73,000.00, as appears upon the tax book.

The National Dredging Company excepts to so much of the order of the board as directs an assessment of $33,000.00, as above stated.

Clerk's Cert. to Transcript of Proceedings Before B'd of Rev. & R'd Com.

Clerk's certificate.

THE STATE OF ALABAMA, }
Mobile County. }

I, Price Williams, Jr., clerk of the board of revenue and road commissioners of Mobile county, do hereby certify that the foregoing (6) six pages, numbered from 1 to 6, both inclusive, contain a true, correct, and exact transcript of the record and proceedings
15 of the said board in the case of The State of Alabama *vs.* The National Dredging Company, a matter before the said board upon the petition of said National Dredging Co. for the abatement of a certain tax assessment.

And I do further certify that in said case the National Dredging Company applied for and obtained an appeal to the city court of Mobile, returnable to the July term, 1892, thereof, and the said National Dredging Company entered into bond in the sum of seven hundred dollars, with T. C. Hartwell and James McPhillips as sureties. And the said appeal of said case being perfected, I here-

with transmit to the clerk of the city court of Mobile said bond, all the original and other papers pertaining to said case.

Given under my hand this 5th day of July, A. D. 1892.

PRICE WILLIAMS, JR., *Clerk.*

Filed in office July 5th, 1892.

JNO. F. POWERS.

Appearance.

Appearance on appeal in the city court.

I appear for the appellee in this case.

WM. S. ANDERSON,
Att'y for County.

Filed in office July 5th, 1892.

JNO. F. POWERS, *Clerk.*

Special Finding of Facts by Court & Judgment.

Special finding of the facts by the court and judgment.

July term, 1892.

SATURDAY, *July 30th*, 1892.

STATE OF ALABAMA
v.
NATIONAL DREDGING COMPANY.

The court finds the facts of the case to be as set out in the agreed state- of facts, as follows:

City Court of Mobile.

STATE OF ALABAMA
v.
NATIONAL DREDGING COMPANY.

Agreed Statement of Facts.

It is agreed by and between the defendant, The National Dredging Company, and the attorney for the appellee and plaintiff that the following facts are the true material facts in this controversy
16 and are to be so considered, subject to legal exceptions, upon the hearing and trial in this court of the petition heretofore filed with the said board for the abatement of the assessment levied against said National Dredging Company:

First. The petitioner, the National Dredging Company, is a corporation of the State of Delaware, and is incorporated by an act of the legislature adopted February 6th, 1888, for the purpose, among others, of building, constructing, buying, selling, owning, and operating dredging machines, steam-tugs, lighters, machinery,

and appliances for the improvement of rivers, harbors, channels, docks, water-courses, lowlands, etc.; that the domicile and principal place of business of said corporation is in the city of Wilmington, in said State of Delaware; that said company had not done and was not doing any business in the State of Alabama and had no property therein on the first day of January, 1891, and had no place of business in said State at that time; that the harbor of Mobile had been theretofore and has since been improved by the aid of congressional appropriations, under the charge of the United States engineers; that in the fall or early winter of 1890 the United States engineer in charge of the work advertised for bids from contractors for the purpose of continuing the work of dredging the channel in Mobile bay under appropriations then recently made by Congress; that the said petitioner became the successful bidder for said work during the month of January, 1891, and after the first day of said month and during subsequent months from time to time, and send certain of its officers and agents with a portion of its machinery and plant hereinafter described to the bay of Mobile, in the county of Mobile, for the purpose of executing said contract with the United States Government and for no other purpose; that after said first day of January, 1891, petitioner purchased from George C. Forbes the following portions of its plant: Dredge-boat "No. 5,"
17 dredge-boat "Craighill," dredge-boat "Forbes," tug-boat "Curtis," tug-boat "Bacon," sloop "Kelvin," and six mud scows; that of the foregoing-named dredge-boats and scows the following were in the city of Mobile, State of Alabama, at the time of the purchase of the same by petitioner and on the first day of January, 1891, viz., dredge "No. 5," dredge "Craighill," sloop Kelvin and two scows, and the tug-boat "Bacon," and were the property of said Forbes; that the following portion of said plant were not in the State of Alabama at that time, but were subsequently brought into said State by petitioner, to wit: Dredge-boat "Forbes," tug-boat "Curtis," tug-boat "Deo Volente," and four scows; that petitioner subsequently, and in the month of January, 1891, purchased from Rittenhouse Moore one scow, which was in the State of Alabama on January 1, 1891, and was the property of said Moore; that since the said first day of January, 1891, petitioner has had two scows built—one in Mobile, Alabama, and one in Scranton, Mississippi; that all of said property so bought or built was bought or built and brought into the State of Alabama for the purpose of executing said contract with the United States Government and for no other purpose; that petitioner brought and had no other property in the State of Alabama on or after the first day of January, 1891, saving as above mentioned and for the purpose aforesaid.

Second. That the said George C. Forbes, from whom petitioner had purchased a portion of its machinery and plant as aforesaid, was a resident of and domiciled in the city of Baltimore, State of Maryland, on and prior to January 1, 1891, and since that date; that on the first day of January, 1891, the said tug-boats "Curtis" and "Bacon" and the said sloop "Kelvin" were both registered in the United States custom-house at Baltimore as the property of said

Forbes; that said tug-boat "Deo Volente" was then registered in the United States custom-house at Wilmington as the property of petitioner; that immediately after the purchase of said tug-boats "Curtis" and "Bacon" and the sloop "Kelvin" the same were registered in the United States custom-house at Wilmington, in the State of Delaware, the domicile of petitioner, where all of said tug-boats and said sloop have since been and are now registered.

Third. That said petitioner has — and will have no further use of said tug-boats, dredge-boats, and scows in the State of Alabama after it shall have completed its contract with the United States Government, which will shortly occur, and that a portion of its machinery and plant has recently been removed to Portland, Me., for the purpose of doing Government work at said place; that said George C. Forbes brought said property into the State of Alabama and bay of Mobile only for the purpose of doing work under the Government contract, he being a previous contractor in said Government work, and the said property was not within the limits of the city of Mobile, as the same was at work in the lower bay, and that none of petitioner's plant was brought to the city of Mobile except to receive supplies or for occasional repairs.

Fourth. That said petitioner did not make any return of its property for the year 1891, although after May, 1891, it furnished the assessor, at said assessor's request, with the names and number of *his* dredges and scows, but with the statement that the same were not liable to assessment for the reasons stated, and that *he* did not know that they would be assessed; that no assessment was made against it by the assessor in his original and principal report; that the assessor of Mobile county made the following assessment against said National Dredging Company in his supplemental assessment, viz: Dredge-boat "No. 5," dredge-boat "Craighill," and dredge-boat "Forbes," $30,000.00; tug-boat "Curtis," $8,000.00; tug-boat "Bacon," $8,000.00; nine scows at three thousand dollars each, $27,000.00; that petitioner had been called upon by said assessor to make such assessment, but declined so to do; that said petitioner had no knowledge of any assessment being made until the tax bill was presented by L. H. Kennedy, Esq., tax collector, of a tax levied under a special act of the legislature for the year 1891, which assessment for such special tax was copied from the tax books of Mobile county for the year 1891, as provided by law; that the fact of such assessment was not made known to said petitioner until the few days before the 18th of March, 1892; that on the 18th of March, 1892, petitioner filed its petition, asking an abatement of said tax, and that the same has been held over under advisement by the board until this date.

Fifth. That all of said tug-boats, dredges, and scows are floating property and can be moved by water from place to place and port to port, the tug-boats by their own motive power and the dredge-boats and scows by being towed.

It is further agreed that the amount of the taxes as fixed by law in $33,000.00 would be: State, $132.00; county, $165.00; school,

$33.00; special, $16.00; assessor's fee, $0.50; collector's fee, $0.50—$347.00.

GAYLORD B. CLARK,
Att'y for Petitioner.
WM. S. ANDERSON,
Att'y for Board of Rev. & R'd Comm'rs, Mobile Co.

It is further agreed that the following facts are true and are to be considered in this matter:

Sixth. That the tax assessor of Mobile county made the following assessment against the National Dredging Company, viz:

Dredge-boat No. 5	$10,000 00
" Craighill	10,000 00
" Forbes	10,000 00
Tug-boat Curtis	8,000 00
" Bacon	8,000 00
Nine scows at $3,000.00 each	27,000 00
	$73,000 00

20 Seventh. That all of this property was brought into the county of Mobile, in the State of Alabama, in the early part of the year 1891, and remained in the county of Mobile continuously during the year 1891, and is still in said county, engaged in dredging the channel in Mobile bay under said contract with the Government of the United States, which is not yet completed, excepting the portion sent to Portland, Me., some time in Feb'y or March, 1892.

GAYLORD B. CLARK,
Att'y for Petitioner,
WM. S. ANDERSON,
Att'y for B'd of Rev. & R'd Com'rs, Mobile Co.

Waiver of Jury & Request for Special Finding of Facts by Court.

It is agreed that the case may be tried and determined by the court without a jury, and we request the court to make a special finding.

WM. S. ANDERSON,
Att'y for State,
GAYLORD B. CLARK,
For Nat. Dredging Co.

And under the facts as found holds that the dredge-boat Forbes, valued at ten thousand dollars; the tug-boat Curtis, valued at eight thousand dollars, and five scows, valued at three thousand dollars each, are liable to State and county taxes, but are not liable for taxes to the city of Mobile or to the tax for the adjustment and settlement of the debts of the city of Mobile, as provided for by the act approved December 8th, 1880.

It is therefore adjudged that the National Dredging Company pay a State tax on the above-named property of... $132 00
A county tax of ... 165 00
School tax of ... 33 00
Special tax for maimed soldiers of ... 16 00
Assessor's fee ... 0 50
Collector's fee ... 0 50

And it is further adjudged that the National Dredging Company pay the costs of this proceeding.

——— ———,
Judge of the City Court of Mobile.

21 *In the Matter of Adjournment.*

It is ordered by the court that all cases on the trial docket not disposed of be continued until the next term of this court, and the court adjourned *sine die* this 30th day of July, 1892.

O. J. SEMMES,
Judge of the City Court of Mobile.

Appeal Bond.

THE STATE OF ALABAMA, }
Mobile County. }

Know all men by these presents that we, National Dredging Company, as principals, and T. C. Hartwell and James McPhillips, as sureties, are held and firmly bound unto the State of Alabama in the sum of seven hundred dollars; for the payment of which we jointly and severally bind ourselves, our heirs, executors, or administrators, firmly by these presents.

Sealed with our seals and dated this 13th day of August, A. D. 1892.

The condition of the above obligation is such that whereas the above-bounden National Dredging Company has this day applied for and obtained an appeal, returnable to the November term, 1892, of the supreme court of Alabama, to supersede and reverse a judgment recovered by the said State of Alabama against the said National Dredging Company at the July term, 1892, of the city court of Mobile for Mobile county for three hundred and forty-seven dollars for taxes and fees, besides costs:

Now, if the said National Dredging Company shall prosecute to effect its said suit in the supreme court of the State of Alabama and shall pay and satisfy such judgment as the supreme court
22 shall render in the premises, then this obligation to be null and void; otherwise to be and remain in full force and effect.

NATIONAL DREDGING CO., [SEAL.]
By CLARK & CLARK, *Att'ys.*
T. C. HARTWELL. [SEAL.]
JAMES McPHILLIPS. [SEAL.]

In presence of—

——— ———.

Filed 19th day of Aug., 1892.

JNO. F. POWERS, *Clerk.*

Citation in Appeal.

THE STATE OF ALABAMA, }
Mobile County. }

City Court.

To the sheriff of Mobile county, Greeting:

Whereas, at a term of the city court of Mobile for Mobile county held on the first Monday of July, 1892, in a certain cause in said court, wherein The State of Alabama is plaintiff and The National Dredging Company is defendant, a judgment was rendered against said National Dredging Company, to reverse which judgment the said National Dredging Company have applied for and obtained from this office an appeal, returnable to the next term of our supreme court of the State of Alabama, to be held at Montgomery on the first Tuesday of November, 1892, next, and the necessary bond having been given by the said National Dredging Company, with T. C. Hartwell and James McPhillips sureties:

Now, you are hereby commanded, without delay, to cite William S. Anderson, attorney for the State of Alabama in said cause, to appear at the next term of our said supreme court to defend against the said appeal if he thinks proper.

23 Witness John F. Powers, clerk of the city court of said county, this 31st day of August, A. D. 1892.

Attest: JNO. F. POWERS, *Clerk.*

Sheriff's Return.

Sheriff's return on citation in appeal.

Received August 31st, 1892, and on the 1st day of September, 1892, I served a copy of the within notice of citation in appeal on Wm. S. Anderson.

PHELAN B. DORLAN, *Sheriff,*
By ED. HARRIS, *D. S.*

Clerk's Certificate to Transcript.

THE STATE OF ALABAMA, }
Mobile County. }

City Court of Mobile.

I, John F. Powers, clerk of the city court of Mobile, do hereby certify that the foregoing pages, numbered from one (1) to seventeen (17), both inclusive, contains a true, complete, and correct transcript of the record of the city court of Mobile in a case therein lately pending, wherein The State of Alabama is plaintiff and The National Dredging Company is defendant.

I further certify that the National Dredging Company applied for and obtained an appeal to the supreme court of the State of Ala-

bama, returnable to the November term, 1892, thereof, and that the said National Dredging Company entered into bond in the sum of seven hundred dollars, with T. C. Hartwell and James McPhillips sureties.

24 In testimony whereof I have hereunto set my hand and affixed the seal of the said city court, at office, in the city and county of Mobile, State of Alabama, this 3rd day of September, A. D. 1892.

JOHN F. POWERS,
Clerk of the City Court of Mobile.

25 *Assignments of Error.*

Now comes the National Dredging Company, appellant, and here assigns the following errors:

1. The court erred in rendering judgment holding that the property in question was subject to taxation in Mobile county for State and county taxes for the year 1891.
2. The court erred in holding that the dredge-boat "Forbes" was liable to such taxation.
3. The court erred in holding that the tug-boat "Curtis" was liable to such taxation.
4. The court erred in holding that the five scows were liable to such taxation—a separate assignment being here made as to each of said scows.
5. The court erred in holding that said property was subject to taxation in Alabama.

GAYLORD B. CLARK AND
FRANK B. CLARK AND
HANNIS TAYLOR,
For Appellants.

Joinder in Error.

There is no error in the record.

WM. S. ANDERSON &
W. L. MARTIN,
Att'y Gen'l, for Appellee.

26 Supreme Court of Alabama, November Term, 1892-'93.

THE NATIONAL DREDGING CO.
v.
THE STATE OF ALABAMA } 1 Div. 771.

Appeal from Mobile city court.

MCCLELLAN, *J.:*

The question presented on this record is whether certain property of the National Dredging Company had a situs in this State for the purposes of taxation when the assessment complained of was made, in the spring of 1891. The property was brought into the State

after January 1st of that year and before the assessor had completed his assessment, and hence was properly assessed, if taxable at all in this State, under the agreed facts. Code, sec. 458. Those facts are: The National Dredging Company is a Delaware corporation, domiciled at Wilmington, in that State. As its name indicates, its business or a part of its business is the operation "of machines, steam-tugs, lighters, machinery and appliances for the improvement of rivers, harbors, channels, docks, water-courses, lowlands," &c. In the fall or early winter of 1890 it entered into a contract with the United States for continuing the work of dredging the channel of Mobile bay, entered upon the execution thereof early in 1891, and from that time on down to the time of the trial of this cause in the city court, July 30, 1892, has been and was at said last-mentioned date still engaged therein. The property found subject to taxation, to wit, one dredge-boat, "Forbes;" one tug-boat, "Curtis," and five mud scows, was brought into this State when the performance of
the contract was entered upon—that is, in January or Febru-
27 ary, 1891—and had remained here up to the trial, except some portion thereof, not specified, which was removed to the State of Maine in March or February, 1892. The contract with the Government had not been completed on July 30, 1892, but its completion would "occur shortly" thereafter, and after such completion the company would have no further use for this property in Alabama. The said tug-boat, dredge, and scows were floating property, capable of being moved from port to port—the tug of its own motive power and the dredge and scows by being towed—and the tug "Curtis" is registered in the custom-house at Wilmington, Delaware.

It is clear from the foregoing epitome of the facts that all of this property was at the time of the assessment being used in the State of Alabama in the prosecution of works wholly within the State, under a contract which involved its presence here in that work for a time the duration of which was indefinite, but which extended beyond a year and a half, and the end of which, even from the standpoint of the latter date, could not be more definitely fixed than as "shortly to occur." During all this time, and possibly to the present moment, the property has been wholly within Alabama, engaged in a business or being used in a work which did not involve its passing even temporarily beyond the limits of the State. Moreover, it has all along been used in the prosecution of this work precisely as property belonging to citizens of this State would be used therein. Indeed, as appears in this record, other property of the same kind, which had previously been used by residents of Alabama in the prosecution of this work, was purchased by the appellant company and, being incorporated with that involved here, has all along been used like it in dredging the channel of Mobile bay, and one scow so used was built in the city of Mobile and has never been, we assume, outside of the State. Again, not only is the period of the contract in the execution of which this property is kept in the State indefinite, and hence the duration of its presence here in the
execution of that contract uncertain, but it is manifest from
28 the agreed facts that this contract is only one of a series for

the dredging of the channel in Mobile bay, covering years before and after the year 1891. This work was in the line of the dredging corporation's business; it had secured this contract under one congressional appropriation when it had to bring its machinery and appliances, this property, to Mobile for its execution. Having it there and being thus in a more advantageous position for entering into another contract or other successive contracts as appropriations are made by Congress, it is fair to assume that the National Dredging Company will enter into other contracts or, rather, at least, that its purpose and intention is to do so if favorable terms can be made. These considerations are proper in arriving at the situs of this property. They go to show by reference to the owner's intention, as fairly inferrable from all the circumstances, an indefiniteness as to the period of the presence of these boats and scows wholly within Alabama beyond that existing as to the duration of the first contract and the use of the property here in performance thereof.

In other words, taking into consideration the business of the corporation, the amount and continuing character of the work to be done in Mobile bay, the preparations made by the company for doing so much thereof as is authorized under one annual appropriation, it may be that this property will be for years engaged upon this work, as a part of that now being used by the company of like kind with this had been used thereon for a year or years prior to 1891. On this state of case, or even leaving out of view the considerations last adverted to, it is clear, we think, that this property is not merely temporarily within Alabama, but that, to the contrary, its presence here is for such an indefinite period as involves the idea of permanancy in the sense in which that term is used with respect to the situs of property for the purposes of taxation. It is here, as any other property is or would be here, in use upon the public works in Mobile bay. Its use in that work is the
29 same as that of the other property originally embraced in this assessment and formerly owned by a citizen of Alabama and by him devoted to this work during previous years, the same as that of the scow which was built in Mobile for this work and has never been beyond the State, and the same as that of another scow built outside of the State for this work. All this other property is property of the State or in the State for the purpose of taxation, though it may at some uncertain future time cease to be property taxable here in consequence of its removal to another jurisdiction, as the property in controversy may sometimes be carried out of the State. Until that happens, however, both classes of property enjoy the same protection of our laws, both classes are devoted to the same use; the continuation of each class within the State is alike indefinite. The one class cannot, in short, be distinguished from the other in any characteristic which is of importance in determining the question of taxability *vel non*, and hence our conclusion that the property in controversy has become so incorporated with and a part of the tangible property of this State for revenue purposes as that its taxable situs is here notwithstanding the fact that the

domicil of its owner is in another State. Mayor of Mobile *v.* Baldwin, 57 Ala., 61; Boyd *v.* City of Selma, 11 So. Rep., 393; Burroughs on Taxation, pp. 40–'1; Trammel *v.* Conner, 91 Ala., 398.

There is nothing in the nature of this particular property to take it out of the general principle. The fact that it is floating property and may be moved from place to place and port to port by water furnishes no more reason for exempting it from taxation here than would exist for the exemption of property which did not float and could be moved from place to place only overland.

With respect to the tug-boat Curtis, a special consideration is advanced in support of its non-taxability. It is a sea-going vessel propelled by steam, and is entitled to registry under statutes of the United States at the port of its owner's domicil. As a matter of fact, it is registered at the custom-house in the city of Wil-
30 mington, Delaware. On this the contention is that, that being home, it cannot be taxed elsewhere. There are many cases which hold that such vessel engaged in commerce between its home port and others, or even wholly between other ports that that of its registry, can be taxed only at the port of registry. It is not our purpose to question these decisions; it is not necessary that we should. They all proceed upon the theory that vessels thus engaged are never in foreign jurisdictions except temporarily and as an incident to the commerce to which they are devoted, and hence that they do not and cannot acquire a situs in foreign ports for the purposes of taxation; they do not become incorporated with the property of other States and countries which they touch intermittently, are never indefinitely there, and their business, the work they perform, the uses to which they are put, is not done and performed within and are not local to the foreign State or country. These considerations can have no application here. The tug Curtis is not engaged in commerce, foreign or interstate. Its business is wholly within Alabama. It is not here temporarily, but indefinitely. It is as much a part of the property of the State for taxation as if it had been chartered for an indefinite period of time to carry freight and passengers or tow ships over the waters of Mobile bay between the city and Point Clear, or as if its owner had devoted it to the carrying trade of the Alabama river; and surely in these cases it could not be successfully insisted that it was not as much Alabama property for taxation as any other boat devoted exclusively to the navigation of the water-courses of the State. The question, indeed, is at last one of situs in fact, and where this is shown neither foreign registry or foreign ownership is of any consequence.

The judgment of the city court is affirmed.

Affirmed.

31 Supreme Court of the State of Alabama, November Term, 1892–'93.

SUPREME COURT, TUESDAY, *November* 1*st*, 1892.

Be it remembered that a regular term of the supreme court of the State of Alabama was begun and holden, according to law, on Tues-

day, the first day of November, A. D. 1892, it being the first Tuesday of said month.

Present and presiding as justices of said court:
Hon. George W. Stone, chief justice.
Hon. Thomas McClellan, associate justice.
Hon. Thomas W. Coleman, associate justice.
Hon. Richard W. Walker, associate justice.
Hon. William S. Thorington, associate justice.

* * * * * * *

SUPREME COURT, WEDNESDAY, *Nov.* 2, 1892.

The court met pursuant to adjournment.
Present: All the justices.

* * * * * * *

Mobile City Court.

THE NATIONAL DREDGING COMPANY
v.
32 THE STATE OF ALABAMA. } 1 Div. 771.

Come the parties, by attorneys, and argue and submit this cause for decision.

* * * * * * *

And the court adjourned until Thursday, Nov. 3, 1892, at ten o'clock a. m.

* * * * * * *

SUPREME COURT, TUESDAY, *April 4th*, 1893.

The court met pursuant to adjournment.
Present: All the justices.

* * * * * * *

Mobile City Court.

THE NATIONAL DREDGING COMPANY
v.
THE STATE OF ALABAMA. } 1 Div. 771.

Come the parties, by attorneys, and, the record and matters therein assigned for errors being argued and submitted and duly examined and understood by the court, it is considered that in the record and proceedings of said city court there is no error. It is therefore considered that the judgment of said court be in all things affirmed. It is also considered that the appellant and T. C. Hartwell and James McPhillips, sureties on the appeal bond, pay the amount of the judgment of the said city court and ten per centum dam-
33 ages thereon and interest and the costs of appeal in this court and the city court.

* * * * * * *

And the court adjourned until Wednesday, April 5th, 1893, at ten o'clock a. m.

34 The State of Alabama, Judicial Department. The Supreme Court of Alabama.

THE STATE OF ALABAMA, } ss:
Montgomery County, }

I, Sterling A. Wood, clerk of the supreme court of Alabama, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the foregoing pages, numbered from 1 to —, inclusive, contain a true copy of the record and of the assignment of errors and of all proceedings had, together with a true copy of the opinion or opinions filed in said court in the cause of The National Dredging Company, plaintiff in error, against The State of Alabama, defendant in error, as the same remain of record and on file in said office.

Seal of the Supreme Court of Alabama.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereto affixed, at the city of Montgomery, on this the 13th day of April, in the year of our Lord one thousand eight hundred and ninety-three.

STERLING A. WOOD,
Clerk of the Supreme Court of Alabama.

35 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the supreme court of the State of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Alabama, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The National Dredging Company and The State of Alabama, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a statute or treaty of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said National Dredging Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, to-